UNITED NATIONS

NINTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Cairo, Egypt, 29 April – 8 May 1995

Distr.
LIMITED

A/CONF.169/L.3
13 December 1994

ENGLISH
ORIGINAL: SPANISH

Items 3, 4, 5 and 6 of the provisional agenda*

INTERNATIONAL COOPERATION AND PRACTICAL TECHNICAL ASSISTANCE FOR STRENGTHENING THE RULE OF LAW: PROMOTING THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

ACTION AGAINST NATIONAL AND TRANSNATIONAL ECONOMIC AND ORGANIZED CRIME, AND THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT: NATIONAL EXPERIENCES AND INTERNATIONAL COOPERATION

CRIMINAL JUSTICE AND POLICE SYSTEMS: MANAGEMENT AND IMPROVEMENT OF POLICE AND OTHER LAW ENFORCEMENT AGENCIES, PROSECUTION, COURTS AND CORRECTIONS; AND THE ROLE OF LAWYERS

CRIME PREVENTION STRATEGIES, IN PARTICULAR AS RELATED TO CRIMES IN URBAN AREAS AND JUVENILE AND VIOLENT CRIMINALITY, INCLUDING THE QUESTION OF VICTIMS: ASSESSMENT AND NEW PERSPECTIVES

Communication dated 2 December 1994 from the Secretary for Justice of Argentina to the Executive Secretary of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

I have the pleasure of addressing myself to you, the Executive Secretary of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in order to request you to circulate among the Member States, in accordance with the rules of procedure for the Ninth Congress, the recommendations of the National Preparatory Meeting for the Ninth Congress held at Buenos Aires, Argentina, from 7 to 10 August 1994.

We would also request that the above-mentioned recommendations should be discussed in connection with each of the topics before the Ninth Congress as they appear in the text duly transmitted to the Secretariat.

(*Signed*) Elias Jassan

*A/CONF.169/1.

DRAFT RESOLUTION

Recommendations of the National Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Buenos Aires from 7 to 10 August 1994

I. INTERNATIONAL COOPERATION AND PRACTICAL TECHNICAL ASSISTANCE FOR STRENGTHENING THE RULE OF LAW: PROMOTING THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME (TOPIC 1)

1. The National Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Buenos Aires from 7 to 10 August 1994 decided, in relation to topic 1, on international cooperation, to accept the following proposals:

(a) With regard to the institution of extradition, the principle of the broadest possible cooperation among States should be established, with a view to standardizing applicable principles and powers, so that the granting of extradition will be the rule and its refusal the exception, taking into account the rights of the accused and also the interests of the victim;

(b) In cases of refusal of extradition, it is proposed that the rule should be established that the requested State must, upon application from the requesting State, assume responsibility for trying the person sought;

(c) The transfer of the person sought should be facilitated even when the latter pleads action pending in the requested State, consideration being given to the legal claims affected, the seriousness of the acts and the amount of the penalty;

(d) An attempt should be made, through multilateral agreements, to find homogeneous terminology in relation to the different types of offence;

(e) Trafficking in narcotics drugs, air piracy, the illicit traffic in children, attacks on satellite communication media, terrorism and computer-related crimes should be established as international crimes;

(f) Member States should be urged to update their domestic legislation in conformity with the principles and recommendations adopted by the United Nations congresses on the prevention of crime and the treatment of offenders;

(g) Finally, it is proposed, as a result of the present Meeting, that a recommendation should be made to the National Congress of Argentina for the adoption in that country of regulations that will further the objective stated above, so that the desired regulatory basis exists by the time that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders is held.

II. ACTION AGAINST NATIONAL AND TRANSNATIONAL ECONOMIC AND ORGANIZED CRIME AND THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT: NATIONAL EXPERIENCES AND INTERNATIONAL COOPERATION (TOPIC 2)

2. The Meeting further decided to accept the following:

(a) The proposal made under topic 2 concerning measures against organized economic crime and the need for Argentina to promote the introduction, discussion and adoption of an international convention on the laundering of assets;

(b) Relevant elements for the preparation of a preliminary draft should be obtained from the competent agencies of the international and multilateral organizations;

(c) A request will be made for the proposal to be submitted, through the relevant institutional channels, to the World Ministerial Conference on Organized Transnational Crime, to be held at Naples, Italy, from 21 to 23 November 1994;

(d) Approval is given in principle to the elements discussed under topic 2:

(i) Limiting the use of cash in financial transactions;

(ii) The role of financial institutions and their obligation to give information on suspicious operations;

(iii) Regulating the activities of casinos and gambling houses;

(iv) An information regime to which financial institutions should be subject, and the role of the training of their staff;

(v) The obligation to preserve records;

(vi) Limiting legal and professional secrecy;

(vii) Establishing security systems in data processing;

(viii) Establishing money-laundering as an offence, with sanctions for juridical persons;

(ix) A system for the confiscation of the proceeds of crime and the derived economic benefits;

(x) Extraterritorial application of criminal law.

3. On the question of "practical measures against corruption" of public officials, attention was drawn to the need to take up, and give special treatment to, the issue of the "de-bureaucratization" of administrative procedures or formalities as a desirable way of discouraging corrupt conduct. It is also proposed that public administration should be computerized as a means of control to help reduce corrupt practices in the administrative area. It is further suggested that customs and immigration procedures and formalities should be standardized at the regional and international levels in order to counter organized transnational crime more effectively. The manual on practical measures against corruption[1] prepared by the Secretariat should be borne in mind, as well as the establishment, at the international, regional and national levels, of a code of conduct for public officials.

4. With regard to environmental protection, the following proposals are made:

(a) The right to enjoy an adequate environment and the duty to preserve the environment should be established in all legislations at the national level;

(b) A chapter concerning environmental offences should be included in penal codes;

(c) The necessary measures should be introduced to ensure that damage to the environment is repaired, either by the transgressors themselves or by the State;

(d) Cooperation agreements should be established between States, including provision for the exchange of experiences on prevention programmes and legislative effectiveness;

(e) The subject of environmental protection should be included at all educational levels, and specifically in curricula for the study of criminal law, and human resources should also be developed to deal with these new problems, by means of degree courses, postgraduate courses, seminars and any other form of training;

(f) Not only should environmental offences be established as a class of offence in penal codes, but also, in the administrative area, offending enterprises should be subject to financial penalties;

(g) Regarding penal sanctions themselves, the principle of subjective culpability should be maintained.

III. CRIMINAL JUSTICE AND POLICE SYSTEMS: MANAGEMENT AND IMPROVEMENT OF POLICE AND OTHER LAW ENFORCEMENT AGENCIES, PROSECUTION, COURTS AND CORRECTIONS; AND THE ROLE OF LAWYERS (TOPIC 3)

A. The role of lawyers

5. The profile of a law graduate with the title of lawyer should be completed by training in the interdisciplinary area of crime prevention.

6. Scientific-professional training should aim to orient the student, within his specific area of work, towards social welfare aspects so that, going beyond the conventional framework of legal advice or the settlement of legal disputes, he can perform juridico-social tasks in the prevention field.

7. Such training should be further strengthened in the area of postgraduate studies in specialities linked with criminal law. For these purposes, account should be taken of the conditions in which the profession finds itself at the present time as a result of relations at the world level, new technological advances and legal innovations, including the new judicial areas and international courts of regional scope, and the need to introduce solutions involving prison mediation and arbitration to facilitate access to justice, including local courts and courts of minor jurisdiction.

B. Correctional systems

8. The idea should become established that the correctional system is part of crime policy and interrelated with all the sectors of crime prevention and criminal justice.

9. Recognizing that the humanization of penalties is an important objective, since up to now sanctions have been conceived as an essentially retributive response, and that prison systems are not in a position to meet expectations regarding crime prevention, the Meeting recommends, with regard to the prison system proper:

(a) The establishment of a relation between the prison "microsystem" and the macrosystem of criminal justice, and the introduction of legislation in the area of criminal law and criminal procedure that is scientifically based and that avoids temporally conditioned, partial measures that would have a reverse effect;

(b) The strengthening of schools for the training of prison officers or personnel as an essential priority in the modernization of the system;

(c) The establishment of a system of exchange of information and of technical cooperation at the international, regional and national levels to facilitate the training of prison personnel and to improve knowledge of the system and the possibilities of investigation;

(d) Improved use of open prisons, even for recidivists;

(e) The review and, as appropriate, amendment of regulations governing prison staff and inmates in line with a system of punishment adapted to the preservation of respect for the inmate as a citizen under a democratic political system where fundamental rights are guaranteed;

(f) Legislation, on an appropriate scientific basis, taking account of regional peculiarities, for new responses to crime such as suspension of proceedings for the purpose of probation, conditional sentences, community work, weekend work, commencement and completion of studies, physical and psychological therapy, or keeping away from certain places.

C. Prosecution

10. The idea should become established in the prosecution service or government procurator's office that the choice of the right policy for criminal prosecution transcends the sphere of crime prevention since the orientation of prosecution towards a group of offences that poses, at a particular time or place, greater danger to the security of the population allows the establishment of a suitable system of compensation for the social expectations of prevention.

11. It should be stressed that prosecution policy is not to be confused with crime policy and that the former will in no way prejudice the principle of legality, nor does it imply acceptance of the theory of "bagatelle" crimes or of "minimum significance".

D. Judiciary

12. A distinction should be made between countries where constitutional provisions and the rules of criminal procedure are not in harmony with the minimum rules for a criminal justice administration providing due safeguards and countries that do have legal provisions of this type. In the first case, the inclusion of such rules in the criminal procedure systems should be urged. In the second case, it is recommended that, in conformity with differing regional situations, instruments should be made available that will help to bring the reality in line with the rules. Regarding the provisions of the minimum rules for the administration of criminal justice, it is recommended that the changes below should be introduced, in line with the deliberations of the body that examined them during the Meeting.

13. *The principle of opportuneness.* The Office of the Public Prosecutor may refrain from prosecuting a punishable act only under the following conditions:

(a) The act must not be punishable by a severe penalty (not subject to a penalty more severe than deprivation of liberty for two years);

(b) The court responsible for the case must approve the dropping of charges.

14. *Appeals.* The right to a second hearing requires that a higher court should have the power to review the findings at first instance, including:

(a) Correct application of the law;

(b) Rationality in the consideration of the evidence;

(c) Compliance with the procedural rules established in state legislation and the other guarantees of due process.

15. *Support services for courts.* Courts should have the cooperation of specialized judicial organs to provide them with the necessary data for an individualization of penalties and measures of treatment with a view to the social reintegration of the convicted person.

16. *Suggestion for States.* It is recommended that States should make efforts in the area of publicity and information to make the public aware that respect for guarantees is not a factor that will increase crime.

17. The text should be submitted to the Ninth Congress for further study and scientific discussion.

18. Specifically, the independence of the judiciary should be consolidated and it should be equipped with the necessary human and technical resources to safeguard the interests of citizens who find themselves in a situation of conflict and, as a result, are defendants or parties in legal proceedings, without forgetting the interests of the victim and of injured third parties.

19. Judges, officials, officers and the community in general should be made well aware of the existence of new forms of criminality, such as economic crime and trafficking in narcotic drugs, and of the need for specific scientific and technical training for their investigation and prosecution.

20. With regard to juvenile offences, it is recommended that:

(a) Governmental structures (administrative and judicial), as well as non-governmental structures, should be reformulated in all jurisdictions so as to be brought in line with the Convention on the Rights of the Child[2] and so as to be consistent with regard to the formulation of policies for juveniles and proper coordination in their implementation;

(b) The holding in police stations, prisons of different kinds and institutions directed by the penitentiary services of persons under 18 years of age who have violated criminal laws should be eradicated;

(c) In all jurisdictions, programmes offering alternatives to the institutionalization of children and adolescents in conflict with criminal law should be developed, through systems of immediate evaluation, assisted liberty, specific treatment, community strategies or other modalities different from those involving deprivation of liberty, interdisciplinary teams being available for all these procedures;

(d) In those exceptional cases where the treatment of persons under 18 in a closed regime is temporarily required, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty[3] should be applied;

(e) Regarding the training of personnel, it should be guaranteed that everyone assuming responsibility over children and adolescents, at whatever level, both in public and in private systems, should have adequate specialized training;

(f) Policies and programmes should be formulated to protect children against all forms of trafficking, exploitation, abuse and use as instruments in crime on the part of adults.

IV. CRIME PREVENTION STRATEGIES, IN PARTICULAR AS RELATED TO CRIME IN URBAN AREAS AND JUVENILE AND VIOLENT CRIMINALITY, INCLUDING THE QUESTION OF VICTIMS: ASSESSMENT AND NEW PERSPECTIVES (TOPIC 4)

21. It is recommended that short-term and medium-term preventive measures should be adopted in the fields of urban planning, housing, education and vocational training in areas of high marginality resulting from internal and external migratory movements.

22. Prevention strategies are recommended involving integrated, global short-term and medium-term approaches to offer urgent responses in extensive zones with a high crime risk.

23. It is recommended that the continuity of social programmes and specific measures at the crime prevention level should be ensured as a basic factor for the understanding of the problems that lead to urban crime and for providing concrete assistance in this regard, requiring the commitment of the actors involved, since one of the major obstacles and reasons for failure in the implementation of programmes is discontinuity resulting from constant changes in regional development policies.

24. The development of criminological research is necessary in view of its importance as a basis for information on the criminality of a region and for the design of criminal policies and crime prevention strategies.

25. The establishment of crime prevention centres is recommended, taking into account the results achieved by the provinces having such centres, and adapting them to local needs.

26. It is recommended that offices should be established to care for victims, assisting them in a comprehensive manner, preventing double victimization and helping the recovery of them and their families. Their rights should be safeguarded and they should receive respectful and dignified treatment from justice officials.

27. It is recommended that the fundamental rights of children should be reaffirmed, that their victimization by the penal system should be avoided and that integrated responses should be sought, based on education and family networks. In view of the grave socio-cultural problem of juvenile delinquency, it must be understood from new perspectives involving responses different from traditional responses. These perspectives include the need to develop specific legislation to cope with the problem of children and young people at risk at the personal, family and social levels, within the context of the accelerated changes that characterize our time both internationally and nationally.

28. It is recommended that the legal training of all those involved with law should be strengthened by creating specialized institutes.

29. The work of international forums, including the Latin American Forum of Mayors for Urban Safety, should be supported.

30. It is recommended that the mass communication media should cooperate in the task of prevention, reviewing the methods of transmitting information on the different crimes and avoiding "making a spectacle out of crime".

31. There is no doubt that the media can play a very positive role in crime prevention. First, they can promote a sound understanding of the criminological phenomenon, dispelling popular myths and explaining the complex factors that condition the various manifestations of delinquency both in its traditional forms and in its new forms and dimensions. Secondly, they can contribute to developing attitudes among the public

towards the values of freedom, solidarity, tolerance and equality before the law, based on the conviction that freedom of expression and the press is an essential foundation of democratic life. With regard to mass communication in relation to the problems of juveniles and violence, it is recommended that the need should be stressed for effective ways of protecting fundamental values in the education of children and juvenile education. It was also recommended that seminars and courses should be held to consider the subject at the global, regional, subregional and national levels.

32. The preparation of a manual for victims is recommended, with a description of procedures and measures to which the victim can have recourse.

V. EXPRESSION OF THANKS TO THE BODIES AND STAFF MEMBERS WHO MADE THIS MEETING POSSIBLE

33. Lastly, the Meeting expressed its thanks to the City Council of Buenos Aires, the Secretariat for Justice of the Argentine Ministry of Justice, the Secretaría de Programación para la Prevención de la Drogadicción y Lucha contra el Narcotráfico, the Consejo Nacional del Menor y la Familia, and the Asociación Interiberoamericana de Ciencios Sociales and their executives and staff, for their generous and indispensable assistance.

34. Thanks were also expressed for the cooperation of the International Scientific and Professional Advisory Council.

35. The Meeting also thanked E[illegible]uardo Vetere, Head of the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, for his important participation in this event.

---

[1]A/CONF.144/8 and Corr.1.

[2]General Assembly resolution 44/25, annex, of 20 November 1989.

[3]General Assembly resolution 45/113, annex, of 14 December 1990.